



DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO  
ATTENTION OF

AFLG-PR

17 May 2001

MEMORANDUM FOR ALL FORSCOM DOCS

SUBJECT: Contracting Information Letter (CIL) 01 – 22, Award-Term Contracting

1. The purpose of this CIL is to further describe the contracting incentive tool of Award-Term Contracting and encourage its use within the FORSCOM contracting community. This CIL builds on the information that was provided in CIL 00 – 40. Award Term Contracting is a tool that was exemplified in a study commissioned by Dr. Kenneth J. Oscar, Deputy Assistant Secretary of the Army (Procurement) entitled "Study of Innovative Contracting Incentives." The goal of the project was to improve the Army's ability to construct more successful business relationships by effectively applying contractual incentives. The complete results of this study are found at <http://acqnet.sarda.army.mil/library/final/finalfrm.htm>.

2. Award-Term Contracting is an incentive tool that is modeled after the award-fee incentive described in Federal Acquisition Regulation (FAR) 16.405-2. It is available for use with both fixed-price and cost-type contracts, although most success has been associated with use in cost contracts. The main difference between the two incentive tools is that, instead of rewarding a contractor for excellent performance with additional fee, award-term rewards the contractor for excellent performance by unilaterally extending the contract without further competition. Under award-term incentive, a Government team monitors and evaluates the contractor's performance in accordance with the Award Term Plan (see CIL 00 – 40 for an example of a plan) on the basis of contractually stipulated criteria that is discrete and measurable. These findings are then reported to a designated Term Determining Official who decides whether or not the contractor's performance was exceptional enough to merit an additional term of performance. When annual funding is used, incremental term extensions may not exceed one year. Although earned by demonstrated performance, term extensions are to be conditioned upon the Government's bona fide need, the availability of funds, and performance by the contractor in accordance with a clearly defined Award Term Clause of the contract.

3. An award-term incentive is distinct from a contractual option. Rather than a discretionary exercise, award-term decisions represent an earned entitlement to a contract extension. Once the award-term incentive criteria have been met, and availability of funds and bona fide need established, the Government may either

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extend the contract or terminate it for convenience (in the event the mission requirement has been abandoned).

4. Why use an award-term incentive? The contractual incentives described in FAR Part 16 are based on profit. However, not all contractors are motivated by the incentive process that rewards excellent performance by paying more money. Typically, defense contractors are concerned with 1) enhanced company image, 2) increased future business, 3) retention of skilled personnel and continuity of workforce, and 4) the maintenance of an allocation base for fixed costs. The award-term incentive allows a contractor to earn more than short-term profits; it offers the contractor a chance to build a long-term business relationship.

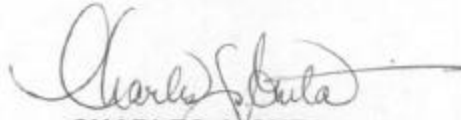
5. It is generally accepted by both the General Accounting Office and defense officials that use of award-term incentives is consistent with the Competition in Contracting Act (CICA). Although the FAR does not expressly mention award-term incentives, the rules for use of this device with regard to CICA are viewed as similar to those related to the use and exercise of contract options. The use of award-term incentives is consistent with the requirements of CICA if the solicitation 1) describes the Government's intention to use an award-term incentive, 2) states the maximum length of the contract, 3) requires the contractor to propose prices, estimated costs, and fees for the award-terms, and 4) states that the Government will evaluate the proposed prices or costs and fees for award term periods. See FAR 17.203 and 17.207(f). The use of an Economic Price Adjustment clause as described in FAR 16.203 is encouraged to aid in pricing the award-term periods.

6. Contracts that include award-term incentives often are designed to exceed five-years in length and can typically run up to ten years without running afoul of either Service Contract Act (SCA) limitations or related restrictions regarding limits on option periods (see FAR 17.204(e)). It is generally accepted that each award-term period is considered a separate contract term. The contract for the additional period is a wholly new contract with respect to application of the SCA's provisions and regulations. As long as any one term does not exceed five-years in length, the time requirements under the SCA are not breached. There is no need to submit a waiver to the Department of Labor. The five-year option limit in FAR 17.204(e) applies only to contracts that include options. The current view is that this FAR limitation does not apply to an award-term because it is not considered an option.

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7. Contact Mr. Oscar F. Eichhorn, (404) 464-6207/DSN 367-5632, or e-mail [oscar.eichhorn@forscom.army.mil](mailto:oscar.eichhorn@forscom.army.mil) for more information regarding this CIL.

A handwritten signature in black ink, appearing to read "Charles J. Guta", with a long horizontal flourish extending to the right.

**CHARLES J. GUTA**

**Colonel, AC**

**Chief, Contracting Division, DCSLOG**

**Principle Assistant Responsible  
for Contracting**